

MONTANA LEGISLATIVE HISTORY

Chapter 571 ~~19~~ 2005

Bill H _____ S B260 Original bill & history c

H. Committee on Judiciary

Hearing Date(s) 3/07 c

ex 3/10 c

 c

 c

Date Out c

S. Committee on Judiciary

Hearing Date(s) 1/27 c

ex 2/01 c

 c

 c

Did this bill originate in an interim committee? Yes No

Committee

Report

Governor's Proposed Amendments 4/15
Conference Committee 4/20

Montana
Legislative
Branch

Montana Legislature

Detailed Bill Information



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Bill Draft Number: LC1905

[Current Bill Text](#)

Bill Type - Number: SB 260

Short Title: Confirmation of written decision to oral pronouncement -- contested cases

Primary Sponsor: Gary L Perry

Bill Actions - Current Bill Progress: Became Law

Bill Action Count: 74

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Action - Most Recent First	Date	Votes Yes	Votes No	Committee
Chapter Number Assigned	05/03/2005			
(S) Signed by Governor	05/02/2005			
(S) Transmitted to Governor	04/25/2005			
(H) Signed by Speaker	04/25/2005			
(S) Signed by President	04/25/2005			
(S) Returned from Enrolling	04/25/2005			
(C) Sent to Printing	04/25/2005			
(C) Sent to Printing	04/21/2005			
(S) Sent to Enrolling	04/21/2005			
(S) 3rd Reading Conference Committee Report Adopted	04/20/2005	<u>49</u>	<u>1</u>	
(S) Scheduled for 3rd Reading	04/20/2005			
(H) 3rd Reading Conference Committee Report Adopted	04/20/2005	<u>100</u>	<u>0</u>	
(H) On Motion Rules Suspended	04/20/2005			
(S) 2nd Reading Conference Committee Report Adopted on Voice Vote	04/20/2005	50	0	
(H) 2nd Reading Conference Committee Report Adopted	04/20/2005	<u>100</u>	<u>0</u>	
(S) Scheduled for 2nd Reading	04/20/2005			
(H) Scheduled for 2nd Reading	04/20/2005			
(H) Conference Committee Report Received	04/20/2005			(H)

				Conference
(S) Conference Committee Report Received	04/20/2005			(S) Conference
(S) Hearing	04/20/2005			(S) Conference
(H) Conference Committee Appointed	04/19/2005			(H) Conference
(H) Returned to Senate Concurred in Governor's Proposed Amendments	04/19/2005			
(S) Conference Committee Appointed	04/19/2005			(S) Conference
(H) Scheduled for 3rd Reading	04/19/2005			
(H) 2nd Reading Governor's Proposed Amendments Concurred	04/18/2005	<u>86</u>	<u>14</u>	
(H) Scheduled for 2nd Reading	04/18/2005			
(S) Transmitted to House for Consideration of Governor's Proposed Amendments	04/16/2005			
(S) 2nd Reading Governor's Proposed Amendments Not Concurred	04/16/2005	<u>28</u>	<u>22</u>	
(S) Scheduled for 2nd Reading	04/16/2005			
(S) Returned with Governor's Proposed Amendments	04/15/2005			
(S) Transmitted to Governor	04/07/2005			
(H) Signed by Speaker	04/07/2005			
(S) Signed by President	04/07/2005			
(C) Sent to Printing	04/06/2005			
(S) Returned from Enrolling	04/06/2005			
(S) Sent to Enrolling	04/05/2005			
(H) Returned to Senate	04/04/2005			
(H) 3rd Reading Concurred	04/04/2005	<u>99</u>	<u>1</u>	
(H) Scheduled for 3rd Reading	04/04/2005			
(H) 2nd Reading Concurred	04/02/2005	<u>98</u>	<u>1</u>	
(H) Scheduled for 2nd Reading	04/02/2005			
(H) Committee Report--Bill Concurred	03/11/2005			(H) Judiciary
(H) Committee Executive Action--Bill Concurred	03/10/2005	18	0	(H) Judiciary
(H) Hearing	03/07/2005			(H) Judiciary
(H) Referred to Committee	03/03/2005			(H) Judiciary
(H) First Reading	03/03/2005			
(S) Transmitted to House	02/07/2005			
(S) 3rd Reading Passed	02/07/2005	<u>50</u>	<u>0</u>	
(S) Scheduled for 3rd Reading	02/07/2005			

(C) Sent to Printing	02/05/2005			
(S) 2nd Reading Passed as Amended on Voice Vote	02/05/2005	50	0	
(S) 2nd Reading Motion to Amend Carried on Voice Vote	02/05/2005	50	0	
(S) Scheduled for 2nd Reading	02/05/2005			
(S) Scheduled for 2nd Reading	02/04/2005			
(S) Scheduled for 2nd Reading	02/03/2005			
(S) Committee Report--Bill Passed	02/01/2005			(S) Judiciary
(S) Committee Executive Action--Bill Passed	02/01/2005	7	5	(S) Judiciary
(S) Hearing	01/27/2005			(S) Judiciary
(C) Introduced Bill Text Available Electronically	01/20/2005			
(S) Referred to Committee	01/20/2005			(S) Judiciary
(S) First Reading	01/20/2005			
(S) Introduced	01/20/2005			
(C) Draft Delivered to Requester	01/18/2005			
(C) Draft Ready for Delivery	01/17/2005			
(C) Draft in Assembly/Executive Director Review	01/17/2005			
(C) Draft in Final Drafter Review	01/17/2005			
(C) Bill Draft Text Available Electronically	01/17/2005			
(C) Draft in Input/Proofing	01/17/2005			
(C) Draft to Drafter - Edit Review [CAJ]	01/17/2005			
(C) Draft in Edit	01/15/2005			
(C) Draft in Legal Review	01/14/2005			
(C) Draft to Requester for Review	01/12/2005			
(C) Draft to Requester for Review	01/02/2005			
(C) Draft Request Received	12/16/2004			

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Sponsor, etc.

Sponsor, etc.	Last Name/Organization	First Name	Mi
Requester	Perry	Gary	L
Drafter	Petes	Greg	
Primary Sponsor	Perry	Gary	L

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Subjects

Description	Revenue/Approp.	Vote Majority Req.	Subject Code
Civil Procedure		Simple	CIV
State Government		Simple	STGO

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Additional Bill Information

Probable Fiscal Note: No

Preintroduction Required: N

Session Law Ch. Number: 571

DEADLINE

Category: General Bills

Transmittal Date: 03/01/2005

Return (with 2nd house amendments) Date: 04/06/2005

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Section Effective Dates

Section(s)	Effective Date	Date Qualified
All Sections	02-MAY-05	

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07/15/2011 08:19 AM Mountain Time

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SENATE BILL NO. 260

INTRODUCED BY G. PERRY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A FINAL DECISION IN A CONTESTED CASE PROCEEDING MUST BE ISSUED WITHIN 90 DAYS AND MUST BE REVISED TO CONFORM TO AN ORAL PRONOUNCEMENT OF A FINAL DECISION IF REQUESTED BY A PARTY IN WRITING WITHIN 30 DAYS AFTER FILING THE FINAL DECISION; REQUIRING MAIL NOTICE OF A DECISION; AMENDING SECTION 2-4-623, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-4-623, MCA, is amended to read:

"2-4-623. Final orders -- notification -- availability. (1) (a) A final decision or order adverse to a party in a contested case ~~shall~~ must be issued within 90 days after a hearing, in writing or stated in the record. A final decision ~~shall~~ must include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, ~~shall~~ must be accompanied by a concise and explicit statement of the underlying facts supporting the findings.

(b) If a written decision and an oral pronouncement of the decision as stated in the record conflict, either party may, within 30 days after filing of the written decision, request that the agency modify the written decision to conform to the oral pronouncement. The agency shall modify the written judgment to conform to the oral pronouncement at a hearing, and the parties must be present at the hearing unless a party waives the right to be present. The parties waive the right to request modification of the written decision if a request for modification of the written judgment is not filed within 30 days after the filing of the written decision.

(2) Findings of facts ~~shall~~ must be based exclusively on the evidence and on matters officially noticed.

(3) Each conclusion of law ~~shall~~ must be supported by authority or by a reasoned opinion.

(4) If, in accordance with agency rules, a party submitted proposed findings

of fact, the decision ~~shall~~ must include a ruling upon each proposed finding.

(5) Parties ~~shall~~ must be notified ~~either personally or~~ by mail of any decision or order. Upon request, a copy of the decision or order ~~shall~~ must be delivered or mailed ~~forthwith~~ in a timely manner to each party and to ~~his~~ each party's attorney of record.

(6) Each agency shall index and make available for public inspection all final decisions and orders, including declaratory rulings under 2-4-501. ~~No such~~ An agency decision or order is not valid or effective against any person or party ~~nor may~~ and it may not be invoked by the agency for any purpose until it has been made available for public inspection as ~~herein~~ required in this section. This provision is not applicable in favor of any person or party who has actual knowledge ~~thereof~~ of the decision or order or when a state statute or federal statute or regulation prohibits public disclosure of the contents of a decision or order."

NEW SECTION. **Section 2. Effective date.** [This act] is effective on passage and approval.

- END -

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on January 27, 2005 at 9:00 A.M., in Room 303 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jon Ellingson (D)
Sen. Jesse Laslovich (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: None.

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 200, SB 260, SB 268, SB 207,
1/24/2005
Executive Action: SB 268

Closing by Sponsor:

SEN. WHEAT stated that he did not believe that passage of the bill would politicize the process. He went on to say that it would simply bring the Water Court in line and consistent with the way other judges are selected. **SEN. WHEAT** then referred to the statement by **Judge Loble** that the adjudication process could take a very long time to complete. He then stated that he personally felt that there would be a need for a Water Judge even after all the claims were processed, therefore, this bill would simply make the selection of the Chief Water Judge consistent with all of the other Courts in the State.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 28}

CHAIRMAN WHEAT resumes chairing the hearings.

HEARING ON SB 260

Opening Statement by Sponsor:

SEN. GARY PERRY, SD 35, MANHATTAN, opened the hearing on **SB 260**, Confirmation of written decision to oral pronouncement -- contested cases. **SEN. PERRY** provided the Committee with a copy of 46-18-116 of the Montana Code Annotated for their reference. This handout is attached as Exhibit 1. **SEN. PERRY** explained that SB 260 would make the law similar to the criminal code for commissions and agencies when handing down decisions. He went on to say that SB 260 would provide that all final decisions in contested cases be issued, in writing, within 90 days of the close of the case. **SEN. PERRY** then referred to New Section 1(b) and explained the process by which an individual could contest the written decision, if that decision conflicted with the oral decision announced at the conclusion of the hearing. He concluded by saying that he felt the least, they as Legislators, could do was extend the same amount of justice to every citizen who could be exposed to a hearing before an agency as was extended to criminals.

EXHIBIT(jus21a01)

Proponents' Testimony: None.

Opponents' Testimony:

Martin Jacobson, Staff Attorney for the Montana Public Service Commission, spoke in opposition to SB 260. **Mr. Jacobson's** written testimony is attached as Exhibit 2.

EXHIBIT(jus21a02)**Informational Testimony:**

Terri McLaughlin, Chief, Water Rights Bureau, Department of Natural Resources and Conservation, explained that their water rights hearings were scheduled twice per month. She went on to say that they were roughly 150 cases behind. **Ms. McLaughlin** encouraged the Committee to amend SB 260 to have the 90 days begin after the submission for final decision.

Kelly Jenkins, General Counsel, Public Employees Retirement Board, stated that the Public Employees Retirement Board utilized the procedure already allowed in the Montana Administrative Procedures Act. He went on to explain that procedure to the Committee.

Bobbi Conrady, Bureau Chief, Office of Fair Hearings, Department of Public Health and Human Services, stated that the Agency's only concern was with the 90-day time frame. She went on to say that her Department was prohibited from making oral decisions. **Ms. Conrady** provided the Committee with events that could prohibit them from making their decisions within 90 days.

Questions from Committee Members and Responses:

SEN. CROMLEY asked **SEN. PERRY** if he felt the bill would address his concerns. **SEN. PERRY** referred to criminal code wherein it says that the written judgment and the oral pronouncement must conform. He went on to say that if it did not, the defendant, under criminal code, could petition the court and the court would have to modify the written judgment to conform to the oral judgment at a hearing.

SEN. CROMLEY then asked **SEN. PERRY** if the hearings were recorded in some manner. **SEN. PERRY** responded that they were tape recorded in most cases, therefore, there would be a written transcript that could be obtained.

SEN. CROMLEY asked **SEN. PERRY** what would happen if there was no decision in 90 days. **SEN. PERRY** responded that as there was no

direction of the consequences referenced in criminal code, he had not put such direction in this bill.

SEN. O'NEIL asked **SEN. PERRY** if an individual could appeal the oral pronouncement rather than wait for the written decision.

SEN. PERRY replied that the proper procedure was to appeal the written decision. He went on to say that part of the problem he was addressing was that the law was unclear as to when the written decision had to be filed.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 24.2}

SEN. O'NEIL then asked **SEN. PERRY** if the reference to the parties meant the party or the party's attorney. **SEN. PERRY** responded that he was not an attorney, however, he felt it meant the party or the representative of the party.

SEN. O'NEIL asked **SEN. PERRY**, if the party did not show up for the hearing, if it was a waiver of his right to be at the hearing. **SEN. PERRY** responded that he thought that was correct.

SEN. MANGAN asked **Bobbi Conrady** if there would be staffing implications to meet the requirements of the bill. **Ms. Conrady** responded that there would be a need for more staff to meet the 90-day time frame.

SEN. MANGAN asked **SEN. PERRY** if he had requested a fiscal note. **SEN. PERRY** stated that none had been requested and that he did not anticipate a need for one.

SEN. MANGAN further inquired of **SEN. PERRY** if he felt, based on the testimony, that they should request a fiscal note. **SEN. PERRY** replied that he did not have an objection, however, he felt that the fiscal note would come back with a zero impact.

Closing by Sponsor:

SEN. PERRY pointed out to the Committee that in code Title 2, Chapter 15, Section 104, there is a definition of a quasi judicial function, which means, "adjudicatory function exercised by an agency involving the exercise of judgment and discretion in making determinations in controversies." **SEN. PERRY** then referred to Title 2, Chapter 15, Section 124, Quasi Judicial Boards, and stated, "If an agency is designated by law as a Quasi Judicial Board for the purposes of this section the following requirements apply...". He went on to say that they were talking about agencies that in effect were acting as courts. He further stated that when they were doing so they should be expected to act as any other court, as the citizens deserved no less. **SEN.**

PERRY concluded by referring to criminal code and stated, "The written judgment must be signed and must be entered on the record within 30 days after the oral pronouncement of the disposition of the case." He then stated that if the criminal courts could get decisions out in 30 days, what was the problem with agencies getting their decisions out in 120 days.

{Tape: 2; Side: A; Approx. Time Counter: 0 - 8.2}

HEARING ON SB 268

Opening Statement by Sponsor:

SEN. JIM SHOCKLEY (R), SD 45, opened the hearing on **SB 268**, Revise penalty for driving without insurance conviction. **SEN. SHOCKLEY** requested that SB 268 be tabled by the Committee.

Motion/Vote: **SEN. CROMLEY** moved that SB 268 BE TABLED. Motion carried 12-0 by voice vote.

{Tape: 2; Side: A; Approx. Time Counter: 8.2 - 10.2}

HEARING ON SB 207

Opening Statement by Sponsor:

SEN. GARY PERRY (R), SD 35, opened the hearing on **SB 207**, Electronic monitoring of sexual offenders. **SEN. PERRY** stated that SB 207 would provide continuous satellite monitoring of sexual offenders as a condition of their parole and life long monitoring of offenders designated as sexually violent predators. He then explained how the satellite monitoring would work and the safety net it would provide for communities. **SEN. PERRY** then provided the Committee with a couple of examples where satellite monitoring would have been very useful. He further stated that with satellite monitoring life sentences would truly be life sentences. **SEN. PERRY** provided the Committee with a copy of 46-23-509, which is attached as Exhibit 3. He then discussed 46-23-509 and the three levels of designation for sex offenders. He concluded by urging the Committee to pass SB 207 as it was a matter of public safety.

EXHIBIT(jus21a03)

tatement and to present any information in mitigation of punishment or reason why the defendant should not be sentenced. If the defendant wishes to make a statement, the court shall afford the defendant a reasonable opportunity to do so. For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, the requirement that the court address the defendant personally may be satisfied by the use of two-way electronic audio-video communication. Audio-video communication may be used if neither party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201.

(4) (a) The court shall permit the victim to present a statement concerning the effects of the crime on the victim, the circumstances surrounding the crime, the manner in which the crime was perpetrated, and the victim's opinion regarding appropriate sentence. At the victim's option, the victim may present the statement in writing before the sentencing hearing or orally under oath at the sentencing hearing, or both.

(b) The court shall give copies of any written statements of the victim to the prosecutor and the defendant prior to imposing sentence.

(c) The court shall consider the victim's statement along with other factors. However, if the victim's statement includes new material facts upon which the court intends to rely, the court shall allow the defendant adequate opportunity to respond and may continue the sentencing hearing if necessary.

(5) The court shall impose sentence or make any other disposition authorized by law.

(6) In felony cases, the court shall specifically state all reasons for the sentence, including restrictions, conditions, or enhancements imposed, in open court on the record and in the written judgment.

History: En. Sec. 221, Ch. 800, L. 1991; amd. Sec. 3, Ch. 125, L. 1995; amd. Sec. 5, Ch. 163, L. 1997; amd. Sec. 3, Ch. 524, L. 2001.

46-18-116. Judgment — conflict between written judgment and oral pronouncement — correction of factually erroneous sentence or judgment. (1) The judgment must set forth the plea, the verdict or finding, and the adjudication. If the defendant is convicted, it must set forth the sentence or other disposition. ~~The written judgment must be entered on the record and the oral pronouncement of the sentence must be entered on the record.~~ At the time that the judgment is filed, the prosecutor of the county in which the sentence was imposed shall serve a copy of the judgment on the defendant. The written judgment must include a statement of the rights set forth in subsection (2).

(2) If a written judgment and an oral pronouncement of sentence or other disposition conflict, the defendant or the prosecutor in the county in which the sentence was imposed may, within 120 days after filing of the written judgment, request that the court modify the written judgment to conform to the oral pronouncement. The court shall modify the written judgment to conform to the oral pronouncement at a hearing, and the defendant must be present at the hearing unless the defendant waives the right to be present or elects to proceed pursuant to 46-18-115. The defendant and the prosecutor waive the right to request modification of the written judgment if a request for modification of the written judgment is not filed within 120 days after the filing of the written judgment in the sentencing court.

(3) The court may correct a factually erroneous sentence or judgment at any time. Illegal sentences must be addressed in the manner provided by law for appeal and postconviction relief.

History: En. Sec. 222, Ch. 800, L. 1991; amd. Sec. 1, Ch. 74, L. 2001; amd. Sec. 1, Ch. 141, L. 2003.

Compiler's Comments

2003 Amendment: Chapter 141 in (1) at beginning of third sentence substituted "written judgment" for "judgment" and at end inserted "within 30 days after the oral pronouncement of the disposition of the case"; and made minor changes in style. Amendment effective October 1, 2003.

46-18-117. Repealed. Sec. 2, Ch. 74, L. 2001.

History: En. Sec. 223, Ch. 800, L. 1991; amd. Sec. 42, Ch. 262, L. 1993.

46-18-118 through 46-18-129 reserved.

46-18-130. Terminated. Sec. 5, Ch. 306, L. 1995.

History: En. Sec. 1, Ch. 306, L. 1995.

46-18-131. Terminated. Sec. 5, Ch. 306, L. 1995.

History: En. Sec. 2, Ch. 306, L. 1995.

SENATE BILL NO. 260

TESTIMONY OF THE MONTANA PUBLIC SERVICE COMMISSION

SB 260 proposes amendments to a MAPA contested case provision, § 2-4-623, MCA. In one proposed amendment to the section SB 260 would require a final order be issued within 90 days following hearing.

PSC and other agency hearings can be followed by preparation and filing of a transcript (about 14 days following close of hearing), the preparation and filing of an initial brief by the applicant (about 20 to 30 days following filing of transcript), the preparation and filing of a response brief by intervenors (about 20 to 30 days following filing of initial brief), and the preparation and filing of a reply brief by the applicant (about 10 to 20 days following filing of the response briefs). The above transcript and briefing schedule and times referenced can vary considerably. In any event the time for completion of briefing in a PSC contested case can approach 90 days and, even if expedited (usually not a great idea), is unlikely to be accomplished in less than 45 days.

The PSC suggests an amendment to SB 260. The amendment would accommodate the transcript and briefing schedule, including the schedule in hearings which are conducted by a hearings examiner. The amendment is attached for the committee's consideration.

Thank you.

- END -

SENATE BILL NO. 260

AMENDMENT SUGGESTED BY THE MONTANA PUBLIC SERVICE COMMISSION

1. Page 1, line 14,

After: "hearing,"

Insert: "or, if arguments are submitted after a hearing or after a proposed order, within 90 days after the arguments are submitted,"

- END -

DATE 1-27-05

SENATE COMMITTEE ON Judiciary

BILLS BEING HEARD TODAY: SB 200, SB 207, SB 260, SB 268

PLEASE PRINT

NAME	PHONE	REPRESENTING	BILL #	SUPPORT	OPPOSE
Martin Jacobson	444-6178	Public Service Commission	SB 260		✓
David M. Schmidt	442-6456	Water Right Solutions Inc.	SB 200		
John Blomquist	3-2211	MT. Stingers	SB 200		X
Mike Murphy		MT. WATER RESOURCES ASSN	SB 200		X
Megan Dumas	589-3583	ASMSU	SB 260	X	
Ben Alsberg	444-9529	Prolet & Poulak			X
Debbie Carroll	925/361	HD 72	SB 200	X	
Greg Van Horssen	2-0230	State Farm Ins	SB 268		✓
Jacqueline Lennick	2-0230	AIA	SB 268		✓
Bill Sauer			SB 207	X	✓
Dallas Erickson	240-5277	MFC	SB 07	X	
HARRIS HIMES		MFC	207	X	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

YARDEN@SOS.MT.MNDO

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN MIKE WHEAT**, on February 1, 2005 at 8:04 A.M., in Room 405 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Sen. Brent R. Cromley (D)
Sen. Aubyn Curtiss (R)
Sen. Jesse Laslovich (D)
Sen. Jeff Mangan (D)
Sen. Dan McGee (R)
Sen. Lynda Moss (D)
Sen. Jerry O'Neil (R)
Sen. Gerald Pease (D)
Sen. Gary L. Perry (R)
Sen. Jim Shockley (R)

Members Excused: Sen. Jon Ellingson (D)

Members Absent: None.

Staff Present: Valencia Lane, Legislative Branch
Mari Prewett, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: None.
Executive Action: SB 196, SB 200, SB 231, SB 241;
SB 251, SB 252 and SB 260

SEN. O'NEIL withdrew his DO PASS MOTION and action of the bill was suspended.

{Tape: 3; Side: A; Approx. Time Counter: 14.5 - 25.7}

EXECUTIVE ACTION ON SB 252

Motion: SEN. O'NEIL moved that SB 252 DO PASS.

Motion/Vote: SEN. MANGAN moved that SB 252 BE TABLED. Motion failed 6-6 by roll call vote with SEN. CROMLEY, SEN. ELLINGSON, SEN. MANGAN, SEN. MOSS, and SEN. PEASE, voting aye with SEN. WHEAT voting aye by proxy.

Motion: SEN. O'NEIL moved that SB 252 DO PASS.

Discussion: SEN. O'NEIL explained the intent of SB 252.

SEN. ELLINGSON stated that although he understood what SEN. O'NEIL was trying to do, he did not think that SB 252 would solve the problem and explained why he felt that way.

SEN. CROMLEY explained his reasons for opposing SB 252.

Motion/Vote: SEN. LASLOVICH moved that SB 252 BE TABLED. Motion carried. SEN. WHEAT and SEN. SHOCKLEY voting aye to table by proxy.

{Tape: 3; Side: B; Approx. Time Counter: 0 - 12.3}

EXECUTIVE ACTION ON SB 260

Motion: SEN. PERRY moved that SB 260 DO PASS.

Discussion: SEN. PERRY explained the purpose of SB 260.

SEN. ELLINGSON asked SEN. PERRY if SB 260 was only going to be applied to administrative hearings. SEN. PERRY responded that he was correct.

SEN. CROMLEY expressed his concerns regarding SB 260.

SEN. MCGEE stated that he would vote in favor of the bill because of the adage of justice delayed being justice denied.

SEN. O'NEIL stated that he felt it was a good bill.

SEN. MANGAN stated that he felt the bill needed a fiscal note attached to it.

SEN. O'NEIL referred to Line 21 and asked **SEN. PERRY** what the penalty would be for a party not being present at the hearing. **SEN. PERRY** replied that if they were not present they would be waiving their rights.

SEN. O'NEIL and **SEN. PERRY** further discussed the matter of the waiving of an individual's rights should they not appear at the hearing and whether or not there was a requirement regarding providing notice of the hearing.

SEN. CROMLEY and **SEN. PERRY** discussed the time limits for requiring that decisions be completed and what would happen if they were not done within that timeframe.

{Tape: 3; Side: B; Approx. Time Counter: 12.3 - 23.7}

SEN. MOSS commented on the testimony presented by the informational witnesses and asked **SEN. PERRY** to address the concerns of these individuals.

SEN. PERRY stated that by requiring final decisions to be completed within 90 days after the hearing, he was attempting to put time constraints on actions being concluded.

SEN. MOSS and **SEN. PERRY** continued to discuss the time constraints that would be implemented should SB 260 pass.

SEN. PERRY explained that if the written decision was issued within the 90 day timeframe, the attorney would know when an appeal would need to be filed.

SEN. CROMLEY indicated that his only real objection to the bill was to the imposition of the time limits.

Motion/Vote: **SEN. MANGAN CALLED THE QUESTION ON SB 260.** Motion carried 7-5 by roll call vote with **SEN. CROMLEY**, **SEN. ELLINGSON**, **SEN. LASLOVICH**, **SEN. MANGAN**, and **SEN. WHEAT** voting no. **SEN. WHEAT** and **SEN. ELLINGSON** voting no by proxy.

ADJOURNMENT

Adjournment: 10:45 A.M.

SEN. MIKE WHEAT, Chairman

MARI PREWETT, Secretary

MW/mp

Additional Exhibits:

EXHIBIT(jus25aad0.PDF)

MONTANA SENATE 2005 LEGISLATURE

ROLL CALL

JUDICIARY

DATE 2-1-05

NAMES	PRESENT	ABSENT	EXCUSED
SEN. MICHAEL WHEAT, CHAIRMAN	x		
SEN. BRENT CROMLEY	x		
SEN. AUBYN CURTISS	x		
SEN. JON ELLINGSON			x
SEN. JESSE LASLOVICH	x		
SEN. JEFF MANGAN	x		
SEN. DAN MCGEE	x		
SEN. LYNDA MOSS	x		
SEN. JERRY O'NEIL	x		
SEN. GERALD PEASE	x		
SEN. GARY PERRY	x		
SEN. JIM SHOCKLEY	x		
VALENCIA LANE, LSD	x		
MARI PREWETT, COMMITTEE SECRETARY	x		



SENATE STANDING COMMITTEE REPORT

February 1, 2005

Page 1 of 1

Mr. President:

We, your committee on **Judiciary** recommend that **Senate Bill 260** (first reading copy -- white) **do pass.**

Signed: _____

Senator Mike Wheat, Chair

- END -

Committee Vote:
Yes 7, No 5.

251211SC.ssc

A handwritten signature, possibly "KX", located in the bottom right corner of the page.

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on March 7, 2005 at 9:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Diane Rice, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Ron Stoker, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Robyn Driscoll (D)
Rep. George Everett (R)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Roger Koopman (R)
Rep. Michael Lange (R)
Rep. Tom McGillvray (R)
Rep. Mark E. Noennig (R)
Rep. Art Noonan (D)
Rep. John Parker (D)
Rep. Jon Sonju (R)
Rep. John Ward (R)
Rep. Bill Wilson (D)
Rep. Jeanne Windham (D)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 104, 119, 260, 2/28/2005
Executive Action: None

Closing by Sponsor:

SEN. SCHMIDT closed the hearing on SB 119 by speaking to the committee members about the fact that the District Court Judges will have the option to use the Foster Care Review Boards to expedite the legal process for these children if SB 119 were to pass.

{Tape: 3; Side: A; Approx. Time Counter: 452 - 475}

HEARING ON SB 260

Sponsor: SEN. GARY PERRY, SD 35, MANHATTAN

Opening Statement by Sponsor:

SEN. GARY PERRY (R), SD 35, opened the hearing on **SB 260**, Confirmation of written decision to an oral pronouncement -- contested cases. The SENATOR spoke to the committee members about the hearing examiners acting as "quasi-courts."

EXHIBIT(juh50a11)

{Tape: 3; Side: B; Approx. Time Counter: 0 - 34}

Proponents' Testimony:

Pam Bucy, Assistant Attorney General, rose in support and informed the members of the committee that the Attorney General's division acts as the administrative office for this process.

{Tape: 3; Side: B; Approx. Time Counter: 34 - 46}

Opponents' Testimony: None

Informational Testimony: None

Questions from Committee Members and Responses:

REP. CLARK queried Ms. Bucy about the usage of this language, "has it ever been used?" **Ms. Bucy** replied, "Yes, it has been used." They continued their conversation regarding the conforming language and the administrative rulings versus criminal/civil rulings.

{Tape: 3; Side: B; Approx. Time Counter: 46 - 75}

Closing by Sponsor:

SEN. PERRY closed the hearing on SB 260.

{Tape: 3; Side: B; Approx. Time Counter: 75 - 80}

statement and to present any information in mitigation of punishment or reason why the defendant should not be sentenced. If the defendant wishes to make a statement, the court shall afford the defendant a reasonable opportunity to do so. For purposes of this section, in cases in which the defendant is charged with a misdemeanor offense, the requirement that the court address the defendant personally may be satisfied by the use of two-way electronic audio-video communication. Audio-video communication may be used if neither party objects and the court agrees to its use. The audio-video communication must operate as provided in 46-12-201.

(4) (a) The court shall permit the victim to present a statement concerning the effects of the crime on the victim, the circumstances surrounding the crime, the manner in which the crime was perpetrated, and the victim's opinion regarding appropriate sentence. At the victim's option, the victim may present the statement in writing before the sentencing hearing or orally under oath at the sentencing hearing, or both.

(b) The court shall give copies of any written statements of the victim to the prosecutor and the defendant prior to imposing sentence.

(c) The court shall consider the victim's statement along with other factors. However, if the victim's statement includes new material facts upon which the court intends to rely, the court shall allow the defendant adequate opportunity to respond and may continue the sentencing hearing if necessary.

(5) The court shall impose sentence or make any other disposition authorized by law.

(6) In felony cases, the court shall specifically state all reasons for the sentence, including restrictions, conditions, or enhancements imposed, in open court on the record and in the written judgment.

History: En. Sec. 221, Ch. 800, L. 1991; amd. Sec. 9, Ch. 125, L. 1995; amd. Sec. 5, Ch. 183, L. 1997; amd. Sec. 3, Ch. 524, L. 2001.

46-18-116. Judgment — conflict between written judgment and oral pronouncement — correction of factually erroneous sentence or judgment. (1) The judgment must set forth the plea, the verdict or finding, and the adjudication. If the defendant is convicted, it must set forth the sentence or other disposition. ~~The written judgment must be signed and must be entered on the record within 30 days after the oral pronouncement of the disposition of the case.~~ At the time that the judgment is filed, the prosecutor of the county in which the sentence was imposed shall serve a copy of the judgment on the defendant. The written judgment must include a statement of the rights set forth in subsection (2).

(2) If a written judgment and an oral pronouncement of sentence or other disposition conflict, the defendant or the prosecutor in the county in which the sentence was imposed may, within 120 days after filing of the written judgment, request that the court modify the written judgment to conform to the oral pronouncement. The court shall modify the written judgment to conform to the oral pronouncement at a hearing, and the defendant must be present at the hearing unless the defendant waives the right to be present or elects to proceed pursuant to 46-18-115. The defendant and the prosecutor waive the right to request modification of the written judgment if a request for modification of the written judgment is not filed within 120 days after the filing of the written judgment in the sentencing court.

(3) The court may correct a factually erroneous sentence or judgment at any time. ~~Illegal sentences must be addressed in the manner provided by law for appeal and postconviction relief.~~

History: En. Sec. 222, Ch. 800, L. 1991; amd. Sec. 1, Ch. 74, L. 2001; amd. Sec. 1, Ch. 141, L. 2003.

Compiler's Comments

2003 Amendment: Chapter 141 in (1) at beginning of third sentence substituted "written judgment" for "judgment" and at end inserted "within 30 days after the oral pronouncement of the disposition of the case"; and made minor changes in style. Amendment effective October 1, 2003.

46-18-117. Repealed. Sec. 2, Ch. 74, L. 2001.

History: En. Sec. 223, Ch. 800, L. 1991; amd. Sec. 42, Ch. 262, L. 1993.

46-18-118 through 46-18-129 reserved.

46-18-130. Terminated. Sec. 5, Ch. 306, L. 1995.

History: En. Sec. 1, Ch. 306, L. 1995.

46-18-131. Terminated. Sec. 5, Ch. 306, L. 1995.

History: En. Sec. 2, Ch. 306, L. 1995.

Montana House of Representatives
Visitors Register

JUDICIARY COMMITTEE

Date 3-7-05

Bill No. SB260 Sponsor(s) Sen. Perry

PLEASE PRINT

PLEASE PRINT

PLEASE PRINT

Name and Address	Representing	Support	Oppose	Inf.
<u>Pam Buey</u>	<u>DOJ</u>	☒	☐	

Please leave prepared testimony with Secretary. Witness Statement forms are available if you care to submit written testimony.

/s/JudicVisitorReg.sample2003

MINUTES

MONTANA HOUSE OF REPRESENTATIVES 59th LEGISLATURE - REGULAR SESSION

COMMITTEE ON JUDICIARY

Call to Order: By **CHAIRMAN DIANE RICE**, on March 10, 2005 at 8:00 A.M., in Room 137 Capitol.

ROLL CALL

Members Present:

Rep. Diane Rice, Chairman (R)
Rep. Paul Clark, Vice Chairman (D)
Rep. Ron Stoker, Vice Chairman (R)
Rep. Arlene Becker (D)
Rep. Robyn Driscoll (D)
Rep. George Everett (R)
Rep. Gail Gutsche (D)
Rep. Christopher Harris (D)
Rep. Roger Koopman (R)
Rep. Michael Lange (R)
Rep. Tom McGillvray (R)
Rep. Mark E. Noennig (R)
Rep. Art Noonan (D)
Rep. John Parker (D)
Rep. Jon Sonju (R)
Rep. John Ward (R)
Rep. Bill Wilson (D)
Rep. Jeanne Windham (D)

Members Excused: None.

Members Absent: None.

Staff Present: John MacMaster, Legislative Branch
Pam Schindler, Committee Secretary

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB-204, 205, 208, 231, 3/3/2005
Executive Action: SB-208, 260-Do Concur; SB-204, 205,
112-Tabled

no. (REPS. DRISCOLL, HARRIS, LANGE and PARKER voted by proxy votes.) (REP. EVERETT to carry)

EXHIBIT(juh53a07)

EXHIBIT(juh53a08)

{Tape: 3; Side: B; Approx. Time Counter: 13 - 78}

EXECUTIVE ACTION ON SB 196

(Please Note: REP. HARRIS returned to the room.)

Motion: REP. STOKER moved that SB 196 BE CONCURRED IN.

Motion: REP. NOENNIG moved that SB 196 BE AMENDED.

EXHIBIT(juh53a09)

Discussion:

Mr. MacMaster explained the amendment to the committee members.

Motion: REP. CLARK moved that SB 196 BE INDEFINITELY POSTPONED.

Motion carried by voice vote.

{Tape: 3; Side: B; Approx. Time Counter: 78 - 206}

EXECUTIVE ACTION ON SB 260

Motion/Vote: REP. WINDHAM moved that SB 260 BE CONCURRED IN.

Motion carried unanimously by roll call vote. REPS. DRISCOLL, LANGE and PARKER voted by proxy vote.) (REP. CLARK to carry)

{Tape: 3; Side: B; Approx. Time Counter: 206 - 215}

HOUSE OF REPRESENTATIVES
Roll Call
JUDICIARY COMMITTEE

DATE 3/10/05

<u>NAME</u>	<u>PRESENT</u>	<u>ABSENT</u>	<u>EXCUSED</u>
REP. DIANE RICE, CHAIR	X		
REP. RON STOKER, VICE CHAIR	X		
REP. PAUL CLARK, VICE CHAIR	X		
REP. ARLENE BECKER	X		
REP. ROBYN DRISCOLL	X		
REP. GEORGE EVERETT	X		
REP. GAIL GUTSCHE	X		
REP. CHRISTOPHER HARRIS	X		
REP. ROGER KOOPMAN	X		
REP. MIKE LANGE	X		
REP. TOM MCGILLVRAY	X		
REP. MARK NOENNIG	X		
REP. ART NOONAN	X		
REP. JOHN PARKER	X		
REP. JON SONJU	X	(late)	
REP. JOHN WARD	X		
REP. BILL WILSON	X		
REP. JEANNE WINDHAM	X		



HOUSE STANDING COMMITTEE REPORT

March 10, 2005

Page 1 of 1

Mr. Speaker:

We, your committee on **Judiciary** recommend that **Senate Bill 260** (third reading copy -- blue) be concurred in.

Signed: *Diane Rice*
Representative Diane Rice, Chair

To be carried by Representative Paul Clark

- END -

Committee Vote:
Yes 18, No 0.

531258SC.hkh
3/10/05
jbr

OFFICE OF THE GOVERNOR
STATE OF MONTANA

BRIAN SCHWEITZER
GOVERNOR



JOHN BOHLINGER
LT. GOVERNOR

April 15, 2005

The Honorable Jon Tester
President of the Senate
State Capitol
Helena, MT 59620

The Honorable Gary Matthews
Speaker of the House
State Capitol
Helena, MT 59620

Dear President Tester and Speaker Matthews:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby return with amendments Senate Bill 260, **"AN ACT PROVIDING THAT A FINAL DECISION IN A CONTESTED CASE PROCEEDING MUST BE ISSUED WITHIN 90 DAYS UNLESS GOOD CAUSE IS SHOWN AND MUST BE REVISED TO CONFORM TO AN ORAL PRONOUNCEMENT OF A FINAL DECISION IF REQUESTED BY A PARTY IN WRITING WITHIN 30 DAYS AFTER FILING THE FINAL DECISION; REQUIRING MAIL NOTICE OF A DECISION; AMENDING SECTION 2-4-623, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE,"** for the following reasons.

Senate Bill 260, sponsored by Senator Perry, establishes a time frame within which a final decision must be issued in a contested case proceeding under the Montana Administrative Procedure Act. It also provides a procedure to follow if a written decision conflicts with an oral pronouncement of the decision, and requires that upon the occurrence of such a conflict, any party may request modification of the written decision, and the oral pronouncement of the decision will prevail. A companion bill, Senate Bill 62, also sponsored by Senator Perry, requires that all final decisions in a contested case proceeding under the Administrative Procedure Act must be in writing. I support that bill.

My proposed amendments to Senate Bill 260 alter the time within which a final decision in a contested case proceeding must be issued. Under my amendments, a written decision must be issued within 90 days after a contested case is deemed submitted for decision to the final decision maker. As the bill stands in its current form, the 90 day period begins to run from the time of the close of the contested case hearing. Because many procedural steps – such as the filing of exceptions and subsequent oral argument – may occur after the close of the hearing, and because

SB 260

Hon. Jon Tester
Hon. Gary Matthews
April 15, 2005
Page 2

scheduling difficulties at times prolong the completion of these steps, it is more realistic to require that the clock for issuance of the written decision begin to run after the case is deemed submitted, rather than at the close of the hearing. Because the time for issuance of the final decision is extended under these proposed amendments, in the spirit of keeping with the sponsor's intent, my amendments compensate by shortening the time within which an extension is authorized, for good cause shown, from 90 to 30 days.

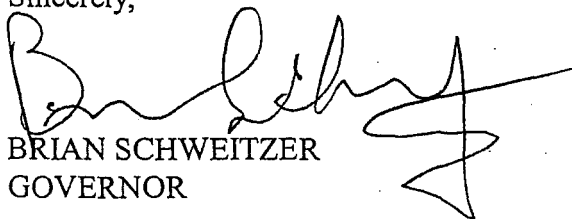
Secondly, my proposed amendments eliminate the requirement in the bill that if an oral pronouncement of the decision conflicts with a written decision, at the request of a party, the agency must modify the decision to conform to the oral pronouncement. I propose this amendment because I do not believe this provision of the bill fosters deliberate judicial decision-making. Rather, I believe that such a requirement would increase the likelihood of faulty agency decisions and unnecessary appeals, thereby increasing the costs of litigation. Additionally, particularly in light of the requirement contained in Senate Bill 62 that all final decisions in contested case hearings be in writing, I believe the requirement in this bill that an oral pronouncement of a decision would trump the written decision undermines the policy that decisions be in writing and that the written decision, and the written decision only, is the decision on which parties to a proceeding can and must rely.

I understand that the sponsor of the bill, Senator Perry, has modeled this requirement that an oral pronouncement of a decision prevails over a written decision on the criminal code. However, I am informed that criminal lawyers, both prosecutors and defense lawyers, find the criminal provision unmanageable and contrary to deliberative decision-making.

My proposed amendments also provide an applicability date, clarifying that Senate Bill 260 applies to contested case hearings commenced after the effective date of the act.

Senator Perry has been informed of my proposed amendments. The proposed amendments are attached to this letter.

Sincerely,



BRIAN SCHWEITZER
GOVERNOR

cc: Legislative Services Division

Amendments to Senate Bill No. 260

Reference Copy

Requested by the Governor

For the Senate Committee of the Whole

Prepared by Greg Petesch

1. Title, lines 5 through line 8.

Following: "SHOWN" on line 5

Strike: remainder of line 5 through "DECISION" on line 8

Following: "DATE"

Insert: "AND AN APPLICABILITY DATE"

2. Page 1, line 13.

Strike: "(a)"

3. Page 1, line 17.

Strike: "HEARING"

Insert: "is considered submitted for decision to the final
decisionmaker"

4. Page 1, line 18.

Strike: "90"

Insert: "30"

5. Page 1, line 19 through line 24.

Strike: subsection (b) in its entirety

6. Page 2, line 10.

Following: line 9

Insert: "NEW SECTION. Section 3. Applicability. [This act]
applies to contested case hearings commenced after [the effective
date of this act]."

MINUTES

**MONTANA SENATE
59th LEGISLATURE - REGULAR SESSION**

CONFERENCE COMMITTEE ON HOUSE AMENDMENTS TO SENATE BILL 260

Call to Order: By **CHAIRMAN MIKE WHEAT**, on April 20, 2005 at 8:06 A.M., in Room 472 Capitol.

ROLL CALL

Members Present:

Sen. Mike Wheat, Chairman (D)
Rep. John Parker, Chairman (D)
Rep. Christopher Harris (D)
Rep. Tom McGillvray (R)
Sen. Gary L. Perry (R)
Rep. Ron Stoker (R)

Members Excused: None.

Members Absent: Sen. Jon Ellingson (D)

Staff Present: Jenn Kirby, Committee Secretary
John MacMaster, Legislative Branch

Please Note. These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing & Date Posted: SB 260, 4/19/2005
Executive Action:

CHAIRMAN WHEAT opened the hearing on SB 260 with a general introduction of the intent of this Conference Committee.

SEN. PERRY spoke about the time frame issue of this bill. He explained the agreement with the three agencies. The attested that the wording is agreeable to them. He stated that there was no objection to Part B. He added that the only objections were to the issue of the time frames. That was fixed and now there is no objection.

SEN. PERRY discussed Part B in detail. He spoke about the written opinions versus the oral pronouncement and the process of those being revised.

SEN. PERRY also commented on the Governor's amendments. He explained what the amendments would do, and how they affect the bill.

CHAIRMAN WHEAT clarified that as he reads the bill, the written opinions must conform to the oral pronouncement.

Ann Brodsky, Legal Counsel, Governor's Office, asserted that she prepared the amendatory veto for the Governor. She explained the thought and intent involved with this action. She described that the oral pronouncement was erroneous and the written opinion was more of a reflective process. She stated that if there is a conflict, the respective party can address the agency for a re-hearing. If the opinion is not legally correct, they don't want to be tied to it.

CHAIRMAN WHEAT inquired into a possible amendment that would protect both **SEN. PERRY** and the other agencies involved in this process. He worried about changing the compromise due to conflict.

Ms. Brodsky claimed that should work to cover all the bases.

SEN. PERRY asserted that is very similar to what happened previously.

{Tape: 1; Side: A; Approx. Time Counter: 0 - 11.6}

Chris Tweeten, Chief Civil Counsel, Office of the Attorney General, declared that the first amendment by the Governor deals with the issue of the time frame. He commented that the second provision that the Governor's amendments deals with is very rarely seen. He said that importing criminal code into MAPA is not a very good idea. He spoke about the State versus Lane. This decision stated that a criminal defendant has the

constitutional right to be present at all critical stages in the proceedings, including sentencing. He discussed the issue of oral pronouncements and written opinions in regard to this situation. He added that under MAPA there is no oral pronouncement or right to be present.

Mr. Tweeten declared that the better provision would be the one dealing with civil proceedings in which the Court can modify the jury's decisions. These are Rules 59-60. There is an opportunity for particular parties to testify.

{Tape: 1; Side: A; Approx. Time Counter: 11.6 - 17}

SEN. PERRY cited that Mr. Tweeten's comments are good suggestions.

SEN. PERRY asked a question of Ms. Brodsky. He inquired if she had spoken with John Conner in relation to his question about criminal code and proceedings. **Ms. Brodsky** stated that she relayed to him that the criminal code was being used as a model in this bill. She described how it was being utilized in the criminal context.

REP. HARRIS asked Mr. Tweeten if it would make sense to eliminate the oral pronouncements all together. **Mr. Tweeten** asserted that he has never provided an oral pronouncement and added that they do not occur all that often. He believes that oral pronouncements by hearing examiners should be discouraged by agencies. He added that practice of these is most likely different in all agencies. It is difficult to enforce members to refrain from vocalizing how they feel on an issue. He added that he believes the bill is somewhat vague at the moment on what an oral pronouncement actually is.

REP. HARRIS stated that he agrees with Mr. Tweeten. He also believes that the vote needs to conform to the final decision. The oral form should not be held as the final word on the decision.

SEN. PERRY wished to address a few personal concerns. He spoke about the issue of the time frame. He also spoke about the issue of an appeal. He discussed this process and some potential problems. He touched on the issue of mailing the decision. He would like to see that portion remain in the bill.

CHAIRMAN WHEAT called for a five-minute recess. **REP. HARRIS** left the hearing.

{Tape: 1; Side: B; Approx. Time Counter: 0 - 0.1}

CHAIRMAN WHEAT called the meeting back to order.

SEN. PERRY proposed that they change the language in regard to the bill and the Governor's amendments.

Ms. Brodsky attested that part of this language is already in current law.

SEN. PERRY talked about the Governor's amendment #3. The Conference Committee touched on the language. He stated that the Governor also amended the bill from 90 days to 30 days. He did not have a problem with that.

John MacMaster, Legislative Services Division, read the amended language on Governor Schweitzer's suggestions.

{Tape: 1; Side: B; Approx. Time Counter: 0.1 - 7}

MOTION: **SEN. PERRY MOVED TO ADOPT AMENDMENTS TO THE GOVERNOR'S AMENDMENTS.**

Mr. MacMaster explained these amendments to the Committee and clarified what their intent is.

VOTE: Motion passed unanimously by voice vote. **SEN. ELLINGSON** and **REP. HARRIS** voted by proxy.

{Tape: 1; Side: B; Approx. Time Counter: 7 - 15.2}

ADJOURNMENT

Adjournment: 9:09 A.M.

SEN. MIKE WHEAT, Chairman

JENN KIRBY, Secretary

MW/JP/jk

Additional Exhibits:

EXHIBIT (ccs85sb0260aad0.PDF)

ROLL CALL

BILL SB260

[illegible]



CONFERENCE COMMITTEE

on House amendments to Senate Bill 260

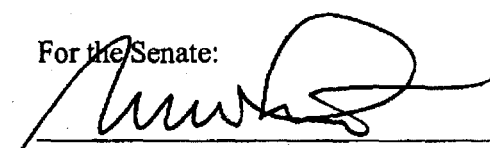
Report No. 1, April 20, 2005

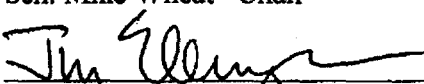
Page 1 of 2

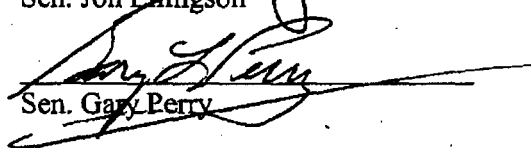
Mr. President and Mr. Speaker:

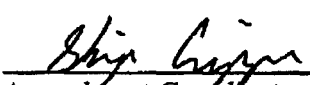
We, your Conference Committee met and considered House amendments to **Senate Bill 260** (reference copy -- salmon) and recommend this Conference Committee report be adopted.

For the Senate:


Sen. Mike Wheat Chair

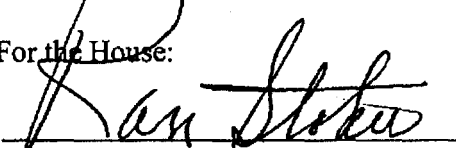

Sen. Jon Ellingson

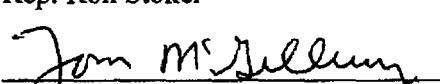

Sen. Gary Perry

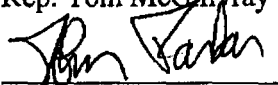

Amendment Coordinator

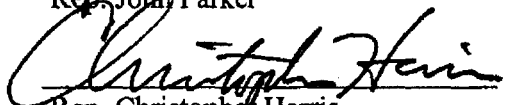
Secretary of the Senate

For the House:


Rep. Ron Stoker


Rep. Tom McGillyray


Rep. John Parker


Rep. Christopher Harris

And, recommend that **Senate Bill 260** (reference copy -- salmon) be amended as follows:

1. Title, page 1, line 5 through line 7.

Strike: "AND MUST" on line 5 through "FINAL" on line 7

Insert: "; PROVIDING A PROCEDURE FOR ISSUING A FINAL WRITTEN
DECISION THAT DIFFERS FROM AN ORAL PRONOUNCEMENT OF A"

2. Title, page 1, line 8.

ADOPT

Amendment # SB 260-1

REJECT

850938CC.ssc



Following: "DATE"

Insert: "AND AN APPLICABILITY DATE"

3. Page 1, line 17.

Strike: "HEARING"

Insert: "is considered to be submitted for a final decision"

4. Page 1, line 18.

Strike: "90"

Insert: "30"

5. Page 1, line 19 through line 24.

Strike: subsection (b) in its entirety

Insert: "(b) If an agency intends to issue a final written decision in a contested case that grants or denies relief and the relief that is granted or denied differs materially from a final agency decision that was orally announced on the record, the agency may not issue the final written decision without first providing notice to the parties and an opportunity to be heard before the agency."

6. Page 2, line 10.

Following: line 9

Insert: "NEW SECTION. Section 3. Applicability. [This act] applies to contested case hearings commenced after [the effective date of this act]."

- END -

PROXY VOTE

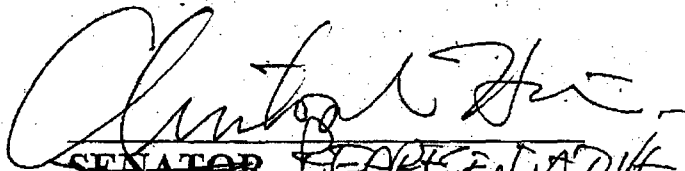
I, THE UNDERSIGNED, HEREBY AUTHORIZE

REP SENATOR PARKER TO VOTE MY PROXY

ON ANY ISSUE BEFORE THE SENATE COMMITTEE

ON SB 260 MEETING HELD ON 04-20-05

2003.


SENATOR REPRESENTATIVE
STATE OF MONTANA

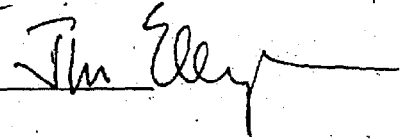
PROXY VOTE

I, THE UNDERSIGNED, HEREBY AUTHORIZE

SENATOR WHEAT TO VOTE MY PROXY
ON ANY ISSUE BEFORE THE SENATE^{CONFERENCE} COMMITTEE

ON SB 260 MEETING HELD ON 4-20-05,
2003.


SENATOR
STATE OF MONTANA



TO: SENATOR Wheat
FROM: KATHY FABIANO
ASSISTANT SECRETARY TO THE SENATE
RE: CONFERENCE COMMITTEE

Your secretary for the conference committee on SB 260 will be
Ken Kirby (x 4440). Your staffer for the conference committee
is John McMaster.

Once you have decided when the committee will meet, please contact the secretary and she will find a room for you. Please try to talk to the secretary before you announce the meeting under order of business #12. I will provide the secretary with a packet containing everything you will need for the committee meeting, including copies of the reference bill and amendments and a copy of the third reading votes in both houses. Meetings must be posted with the Secretary of the Senate's office as usual. Your secretary will notice all committee members and the staffer.

Each house votes separately and a majority of each house is needed to report the bill out of conference committee. If the committee can't reach agreement you may meet again and reconsider your action, dissolve and appoint new members, or dissolve and become a free conference committee.

Please call me at 4840 or stop by my office in room 302 if you have any questions.

Cc: Conference Committee Secretary

"Bills to the Senate" Report

April 19, 2005

Date Range: 04/19/2005 01:00:00 PM - 04/19/2005 02:43:45 PM

02:44 PM

10- SB - Accede to Senate request to appoint a conference committee:**Date:** April 19, 2005**To:** Bill Lombardi, Secretary of the Senate**From:** Marilyn Miller, Chief Clerk of the House

I am directed by the House of Representatives to inform the Senate that the House of Representatives this day, acceded to the request of the Senate and has authorized the Speaker to appoint a conference committee to meet with a like committee from the Senate on House amendments to Senate bill 260. The Speaker appointed the following members:

Reps. Stoker, McGillvray, Parker, and Harris appointed**SB 260** Perry, Gary 19-APR-05 (H) Conference Committee Appointed

Confirmation of written decision to oral pronouncement - contested cases

Senate members: The President Appoints Senators Wheat, Ellingson, and Perry

SHORT TITLE: Confirmation of written
decision to oral pronouncement - contested cases

SPONSOR: Sen. Perry

ORDER OF BUSINESS NO. 6

CONFERENCE COMMITTEE APPOINTMENTS

SENATOR Ellingson: MR. PRESIDENT, I MOVE THE
APPOINTMENT OF A ☐ CONFERENCE COMMITTEE ON
SB 260 AND REQUEST THE HOUSE TO APPOINT A
LIKE COMMITTEE.

President Tester: The President Appoints

House Appoints:

SEN. Wheat CHAIR

REP. _____ VICE CHAIR

SEN. Ellingson

REP. _____

SEN. Perry

REP. _____

TO THE ☐ CONFERENCE COMMITTEE ON ☐ (S) BILL NO. 260

CONFERENCE COMMITTEE PROCEDURE

1. Contact chairman and set time for the meeting. Senators always chair these conference committees; Representatives are the vice-chairs.
2. Schedule a room with House or Senate Sergeant-of-Arms office.
3. Post meeting with Secretary of Senate's office--sometimes a phone call is best.
4. Send notice to all committee members and staffer.
5. Set up meeting room as you would any committee meeting:
 - A. Sign-in sheet
 - B. Bill, Fiscal Note (if applicable)
 - C. Note pad and pencil for each member
 - D. Additional proposed amendments if available
6. Submit Conference Committee Report Request (purple) to the House (if a HB) or Senate (if a SB) Amendments Coordinator. Sign clipboard as with any other meeting and place request form in "IN" basket. Vote tally is on this sheet; record the vote after each name (Y or N). You will need Y votes from at least two Senators and at least two Representatives to report the bill out of committee. If one house votes against the motion, the committee can do one of the following:
 1. Meet again
 2. Dissolve and request appointment of new members
 3. Dissolve and request a free conference committee
 4. Reconsider action by those against
7. Acquire signatures on the Conference Committee Report from each committee member that voted YES, House and Senate. The Report will come in triplicate (white, pink, and green).
8. Get report initialed in Secretary of Senate's office, keep copy of the Conference Committee Report for your minutes. This office will get the originals to correct offices.
9. Do minutes as usual. Include any amendments, exhibits, and copy of the Conference Committee Report.
10. If they cannot come to an agreement and choose to indefinitely postpone, see the Secretary's office.

OFFICE OF THE GOVERNOR
STATE OF MONTANA

BRIAN SCHWEITZER
GOVERNOR



JOHN BOHLINGER
LT. GOVERNOR

April 15, 2005

The Honorable Jon Tester
President of the Senate
State Capitol
Helena, MT 59620

The Honorable Gary Matthews
Speaker of the House
State Capitol
Helena, MT 59620

Dear President Tester and Speaker Matthews:

In accordance with the power vested in me as Governor by the Constitution and the laws of the State of Montana, I hereby return with amendments Senate Bill 260, "AN ACT PROVIDING THAT A FINAL DECISION IN A CONTESTED CASE PROCEEDING MUST BE ISSUED WITHIN 90 DAYS UNLESS GOOD CAUSE IS SHOWN AND MUST BE REVISED TO CONFORM TO AN ORAL PRONOUNCEMENT OF A FINAL DECISION IF REQUESTED BY A PARTY IN WRITING WITHIN 30 DAYS AFTER FILING THE FINAL DECISION; REQUIRING MAIL NOTICE OF A DECISION; AMENDING SECTION 2-4-623, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE," for the following reasons.

Senate Bill 260, sponsored by Senator Perry, establishes a time frame within which a final decision must be issued in a contested case proceeding under the Montana Administrative Procedure Act. It also provides a procedure to follow if a written decision conflicts with an oral pronouncement of the decision, and requires that upon the occurrence of such a conflict, any party may request modification of the written decision, and the oral pronouncement of the decision will prevail. A companion bill, Senate Bill 62, also sponsored by Senator Perry, requires that all final decisions in a contested case proceeding under the Administrative Procedure Act must be in writing. I support that bill.

My proposed amendments to Senate Bill 260 alter the time within which a final decision in a contested case proceeding must be issued. Under my amendments, a written decision must be issued within 90 days after a contested case is deemed submitted for decision to the final decision maker. As the bill stands in its current form, the 90 day period begins to run from the time of the close of the contested case hearing. Because many procedural steps – such as the filing of exceptions and subsequent oral argument – may occur after the close of the hearing, and because

SB 260

Amendments to Senate Bill No. 260

Reference Copy

Requested by the Governor

For the Senate Committee of the Whole

Prepared by Greg Petesch

1. Title, lines 5 through line 8.

Following: "SHOWN" on line 5

Strike: remainder of line 5 through "DECISION" on line 8

Following: "DATE"

Insert: "AND AN APPLICABILITY DATE"

2. Page 1, line 13.

Strike: "(a)"

3. Page 1, line 17.

Strike: "HEARING"

Insert: "is considered submitted for decision to the final
decisionmaker"

4. Page 1, line 18.

Strike: "90"

Insert: "30"

5. Page 1, line 19 through line 24.

Strike: subsection (b) in its entirety

6. Page 2, line 10.

Following: line 9

Insert: "NEW SECTION. Section 3. Applicability. [This act]
applies to contested case hearings commenced after [the effective
date of this act]."

SENATE BILL NO. 260

INTRODUCED BY PERRY

A BILL FOR AN ACT ENTITLED: "AN ACT PROVIDING THAT A FINAL DECISION IN A CONTESTED CASE PROCEEDING MUST BE ISSUED WITHIN 90 DAYS UNLESS GOOD CAUSE IS SHOWN AND MUST BE REVISED TO CONFORM TO AN ORAL PRONOUNCEMENT OF A FINAL DECISION IF REQUESTED BY A PARTY IN WRITING WITHIN 30 DAYS AFTER FILING THE FINAL DECISION; REQUIRING MAIL NOTICE OF A DECISION; AMENDING SECTION 2-4-623, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE."

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-4-623, MCA, is amended to read:

"2-4-623. Final orders -- notification -- availability. (1) (a) A final decision or order adverse to a party in a contested case shall must be issued within 90 days after a hearing, in writing or stated in the record. A final decision shall must include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, shall must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. A FINAL DECISION MUST BE ISSUED WITHIN 90 DAYS AFTER A CONTESTED CASE HEARING UNLESS, FOR GOOD CAUSE SHOWN, THE PERIOD IS EXTENDED FOR AN ADDITIONAL TIME NOT TO EXCEED 90 DAYS.

(b) If a written decision and an oral pronouncement of the decision as stated in the record conflict, either party may, within 30 days after filing of the written decision, request that the agency modify the written decision to conform to the oral pronouncement. The agency shall modify the written judgment to conform to the oral pronouncement at a hearing, and the parties must be present at the hearing unless a party waives the right to be present. The parties waive the right to request modification of the written decision if a request for modification of the written judgment is not filed within 30 days after the filing of the written decision.

(2) Findings of facts shall must be based exclusively on the evidence and on matters officially noticed.

(3) Each conclusion of law shall must be supported by authority or by a reasoned opinion.

(4) If, in accordance with agency rules, a party submitted proposed findings of fact, the decision shall must include a ruling upon each proposed finding.

(5) Parties shall must be notified either personally or by mail of any decision or order. Upon request, a copy of the decision or order shall must be delivered or mailed forthwith in a timely manner to each party and

1 to his each party's attorney of record.

2 (6) Each agency shall index and make available for public inspection all final decisions and orders,
3 including declaratory rulings under 2-4-501. ~~No such~~ An agency decision or order is not valid or effective against
4 any person or party ~~nor may and it may not~~ be invoked by the agency for any purpose until it has been made
5 available for public inspection as herein required in this section. This provision is not applicable in favor of any
6 person or party who has actual knowledge thereof of the decision or order or when a state statute or federal
7 statute or regulation prohibits public disclosure of the contents of a decision or order."

8

9 NEW SECTION. Section 2. Effective date. [This act] is effective on passage and approval.

10

- END -

Hon. Jon Tester
Hon. Gary Matthews
April 15, 2005
Page 2

scheduling difficulties at times prolong the completion of these steps, it is more realistic to require that the clock for issuance of the written decision begin to run after the case is deemed submitted, rather than at the close of the hearing. Because the time for issuance of the final decision is extended under these proposed amendments, in the spirit of keeping with the sponsor's intent, my amendments compensate by shortening the time within which an extension is authorized, for good cause shown, from 90 to 30 days.

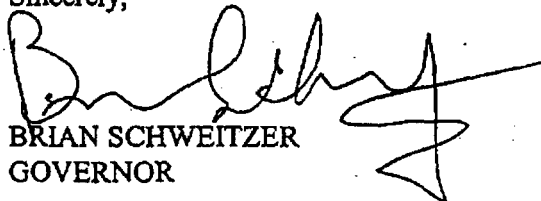
Secondly, my proposed amendments eliminate the requirement in the bill that if an oral pronouncement of the decision conflicts with a written decision, at the request of a party, the agency must modify the decision to conform to the oral pronouncement. I propose this amendment because I do not believe this provision of the bill fosters deliberate judicial decision-making. Rather, I believe that such a requirement would increase the likelihood of faulty agency decisions and unnecessary appeals, thereby increasing the costs of litigation. Additionally, particularly in light of the requirement contained in Senate Bill 62 that all final decisions in contested case hearings be in writing, I believe the requirement in this bill that an oral pronouncement of a decision would trump the written decision undermines the policy that decisions be in writing and that the written decision, and the written decision only, is the decision on which parties to a proceeding can and must rely.

I understand that the sponsor of the bill, Senator Perry, has modeled this requirement that an oral pronouncement of a decision prevails over a written decision on the criminal code. However, I am informed that criminal lawyers, both prosecutors and defense lawyers, find the criminal provision unmanageable and contrary to deliberative decision-making.

My proposed amendments also provide an applicability date, clarifying that Senate Bill 260 applies to contested case hearings commenced after the effective date of the act.

Senator Perry has been informed of my proposed amendments. The proposed amendments are attached to this letter.

Sincerely,


BRIAN SCHWEITZER
GOVERNOR

cc: Legislative Services Division

PERRY

I: time Frame

II: Appeal → 30 days to
file = but from what
point? Oral or Written?

A: Only based on Written

III: Making Final Decision?

- 5 Minute Recess -
Rep. HARRIS Exits

Called back to Order →
@ 8:53 by: Wheat

PERRY → replace w/
Wording

ANN → Current Law

I:

A: 90 days: submitted for
final decision

B: 90 days to 30

Amend further

Governor Amendments

1 → 8 to 7

2 → Strike

3 → "considered separately
for Final decision"

4: Accept

5 → ~~Reject~~ Accept

was Amendmend

6: Accepted

Unanimous House
Senate

Ajourn → 9:09A

04/20 - SB260
Called to Order → 8:00am
by Sen. Wheat

Perry → Explain what it does

I: Time Frame

A: Agreement w/ 3 Agencies

1: Agreeable to Hearing

B: No Objection to Part B

C: Only Part A

1: Fix it

2: No Objection

II: Part B

A: Deal ^{pronouncement} made after Contested
hearing - Gooding Case

Closed

1: If Written Opinion didn't
match Oral Pronouncement

Revise Written

a: 2 mos. later

2: Unnecessary Appeals

B: @ request of Party
Either Party

III: 600,000's Amend.

A: Deal trump undermines
Written Law Civil

KJ
B

Wheat

I: Oral Pronouncement

A: Even if no legal
precedent

ANN

- Governor's Office

Amendatory Order

I: INSTANCES w/ Decision

maker makes Oral Pronounce

A: Oral was Erroneous

B: Warning more of a
Reflective Process

II: Either Strike Pronouncement

A: If Conflict → Party
can address Agency
for Re-hearing.

B: Not legally Correct -
Don't want to be tied
to that opinion

Wheat → ANN

A: Compromise → if in
Conflict

- 1: Agency must have
Written reason for
Change

- 6: Opportunity for Parties
to testify
- 7: Procedural Road map

Chris Tweeten → AG office

A: Time limit → hearing
must be closed

- 1: 1st 600. Amend deals
with that

B: 2nd Part

- 1: Rule - Never seen

2: Importing Criminal
Code to MAPA

a: Not Good

3: State vs Lane

a: Defendant has right
to be Present

b: Deal should trump

4: MAPA = NO oral

Pronouncement or right
to be Present.

5: Better → Civil Case

a: Court can modify

Jury's Decisions

b: Process in Place

c. Rules FAIR

PERRY

A: Good Suggestions

B: → Ann Brodsky

1: John Conner →
Criminal Code

2: Criminal Context

HARRIS → Tweeten

A: Get rid of Oral
Pronouncement?

B: Not Final Decisions =

just recommendations

1: Practice Varies

2: Difficult to Enforce

3: Vote must CONFORM?

HARRIS

Agree w/ Tweeten

PERRY

2005 Montana LegislatureAbout Bill -- Links**SENATE BILL NO. 260
INTRODUCED BY PERRY**

AN ACT PROVIDING THAT A FINAL DECISION IN A CONTESTED CASE PROCEEDING MUST BE ISSUED WITHIN 90 DAYS UNLESS GOOD CAUSE IS SHOWN; PROVIDING A PROCEDURE FOR ISSUING A FINAL WRITTEN DECISION THAT DIFFERS FROM AN ORAL PRONOUNCEMENT OF A DECISION; REQUIRING MAIL NOTICE OF A DECISION; AMENDING SECTION 2-4-623, MCA; AND PROVIDING AN IMMEDIATE EFFECTIVE DATE AND AN APPLICABILITY DATE.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

Section 1. Section 2-4-623, MCA, is amended to read:

"2-4-623. Final orders -- notification -- availability. (1) (a) A final decision or order adverse to a party in a contested case ~~shall~~ must be in writing or stated in the record. A final decision ~~shall~~ must include findings of fact and conclusions of law, separately stated. Findings of fact, if set forth in statutory language, ~~shall~~ must be accompanied by a concise and explicit statement of the underlying facts supporting the findings. A final decision must be issued within 90 days after a contested case is considered to be submitted for a final decision unless, for good cause shown, the period is extended for an additional time not to exceed 30 days.

(b) If an agency intends to issue a final written decision in a contested case that grants or denies relief and the relief that is granted or denied differs materially from a final agency decision that was orally announced on the record, the agency may not issue the final written decision without first providing notice to the parties and an opportunity to be heard before the agency.

(2) Findings of facts ~~shall~~ must be based exclusively on the evidence and on matters officially noticed.

(3) Each conclusion of law ~~shall~~ must be supported by authority or by a reasoned opinion.

(4) If, in accordance with agency rules, a party submitted proposed findings of fact, the decision ~~shall~~ must include a ruling upon each proposed finding.

(5) Parties ~~shall~~ must be notified ~~either personally or~~ by mail of any decision or order. Upon request, a copy of the decision or order ~~shall~~ must be delivered or mailed ~~forthwith~~ in a timely manner to each party and to ~~his~~ each party's attorney of record.

(6) Each agency shall index and make available for public inspection all final decisions and orders, including declaratory rulings under 2-4-501. ~~No such~~ An agency decision or order is not valid or effective against any person or party ~~nor may~~ and it may not be invoked by the agency for any purpose until it has been made available for public inspection as ~~herein~~ required in this section. This provision is not applicable in favor of any person or party who has actual knowledge ~~thereof~~ of the decision or order or when a state statute or federal statute or regulation prohibits public disclosure of the contents of a decision or order."

Section 2. Effective date. [This act] is effective on passage and approval.

Section 3. Applicability. [This act] applies to contested case hearings commenced after [the effective date of this act].

- END -

Latest Version of SB 260 (SB0260.ENR)

Processed for the Web on April 25, 2005 (1:28pm)

New language in a bill appears underlined, deleted material appears stricken.

Sponsor names are handwritten on introduced bills, hence do not appear on the bill until it is reprinted.

See the [status of this bill](#) for the bill's primary sponsor.

[Status of this Bill](#) | [2005 Legislature](#) | [Leg. Branch Home](#)

[This bill in WP 5.1](#) | [All versions of all bills \(WP 5.1 format\)](#)

[Authorized print version w/line numbers \(PDF format\)](#)

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Prepared by Montana Legislative Services

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